

1 MICHAEAL A. FEDERICO (SBN 005946)
2 *mfederico@ocgas.com*
OLSON CANNON GORMLEY & STOBERSKI
3 9950 West Cheyenne Avenue
4 Las Vegas, Nevada 89129
Telephone: (702) 384-4012
Facsimile: (702) 383-0701

5 KELLEY S. OLAH (*Pro Hac Vice*)
KOlah@btlaw.com
6 NOUSHAN NOUREDDINI (*Pro Hac Vice*)
NNoureddini@btlaw.com
BARNES & THORNBURG LLP
7 2029 Century Park East, Suite 300
8 Los Angeles, California 90067
Telephone: (310) 284-3880
Facsimile: (310) 284-3894

10 Attorneys for Defendants
COSTCO WHOLESALE CORPORATION;
11 MAPLEBEAR INC. d/b/a INSTACART

12
13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15
16 KRISTINA A. BIENEK, an individual,

17 Plaintiff,

18 v.

19 AFFINITYLIFESTYLES.COM, INC. d/b/a
REAL WATER, a Nevada corporation; REAL
20 WATER INC., a Delaware Corporation;
COSTCO WHOLESALE CORP., a Delaware
21 Corporation; MAPLEBEAR, INC. d/b/a
INSTACART, a Delaware Corporation;
22 DOES 2 through 10, inclusive; ROE
CORPORATIONS 11 through 20, inclusive;
23 and ABC LIMITED LIABILITY
COMPANIES 21 through 30, inclusive,

24 Defendants.

25 Case No. 2:21-cv-02005-APG-DJA

26
27 **STIPULATION BETWEEN DEFENDANTS**
MAPLEBEAR INC. d/b/a INSTACART,
COSTCO WHOLESALE CORPORATION,
AFFINITYLIFESTYLES.COM, INC. d/b/a
REAL WATER, AND REAL WATER INC.
AND PLAINTIFF KRISTINA A. BIENEK
AND ~~PROPOSED~~ ORDER TO STAY
DISCOVERY

28 Complaint Filed: July 30, 2021

///

///

RECITALS

Plaintiff Kristina A. Bienek (“Plaintiff”) and Defendants Maplebear Inc. d/b/a Instacart (“Instacart”), Costco Wholesale Corporation (“Costco”), AffinityLifestyles.com, Inc. d/b/a Real Water (“AffinityLifestyles.com, Inc.”), and Real Water Inc. (“Real Water”)¹ (collectively the “Parties”), by and through their respective counsel of record, do hereby stipulate and respectfully request an order staying all discovery in this matter pending resolution of Plaintiff’s Motion to Remand to State Court [ECF Dkt. No. 18].

On July 30, 2021, Plaintiff filed this matter in Eighth Judicial District Court, Clark County, Case No. A-21-838724-C. On November 5, 2021, Costco and Instacart removed this action to the United States District Court for the District of Nevada. *See* Petition for Removal [ECF Dkt. No. 1]. On November 26, 2021, Plaintiff filed a Motion to Remand to State Court (“Plaintiff’s Motion”). *See* Plaintiff’s Motion [ECF Dkt. No. 18]. On December 10, 2021, Costco and Instacart filed a response to Plaintiff’s Motion. *See* Costco’s and Instacart’s Response [ECF Dkt. No. 21]. On December 17, 2021, Plaintiff filed her reply brief in support of her Motion. *See* Plaintiff’s Reply [ECF Dkt No. 25]. Plaintiff’s Motion is fully briefed and remains pending before this Court.

On October 8, 2021, the United States Bankruptcy Court for the District of Nevada entered an Order Approving Stipulation Allowing Claimants Relief From The Automatic Stay To Liquidate Alleged Personal Injury Claims In State Court Litigation (ECF No. 16), which allowed AffinityLifestyles.com, Inc. and Real Water to proceed with discovery and evidence preservation. Costco, Instacart, and Plaintiff are likewise not precluded from preserving evidence.

Courts have broad discretionary power to control discovery including the decision to allow or deny discovery. *See, e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). In cases like this, a temporary stay of discovery will promote the goals of Rule 1 of the Federal Rules of Civil Procedure, “to secure the just, speedy, and inexpensive determination” of this action –

¹ Nothing in this stipulation alters Costco's and Instacart's position, as stated in their Notice of Removal, ECF Dkt. No. 1, and their opposition to Plaintiff's Motion to Remand, ECF Dkt. No. 21, that AffinityLifestyles.com and Real Water have been deemed nominal defendants in this action by stipulation and court order and as a result, their citizenship should not be considered for purposes of determining diversity jurisdiction.

1 conserving judicial resources and promoting a more efficient disposition of the threshold
 2 jurisdictional and venue issues, which should be made at the earliest stage of litigation. Moreover,
 3 under Rule 26(c)(1), a court may issue an order to protect a party or person from annoyance,
 4 embarrassment, oppression, or undue burden or expense, including forbidding discovery. Fed. R.
 5 Civ. P. 26(c)(1).

6 Although a pending motion to remand is “not ordinarily a situation that in and of itself
 7 would warrant a stay of discovery,” when the motion challenges jurisdiction or venue, or immunity,
 8 a stay is proper. *See Twin City Fire Ins. Co. v. Employers Ins. of Wausau*, 124 F.R.D. 652, 653 (D.
 9 Nev. 1989); *Turner Broadcasting System, Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev.
 10 1997); *Hamrick v. Feldman*, 2013 U.S. Dist. LEXIS 49608, at *7 (D. Nev. Apr. 5, 2013); *see also*
 11 *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 602 (D. Nev. 2011) (matters dealing with
 12 “preliminary issues of jurisdiction, venue, or immunity” typically warrant a stay of discovery).

13 Courts in this district have stayed discovery where, as here, a “preliminary peek” at the
 14 merits of the pending motion demonstrated: “[f]irst, the pending motion must be potentially
 15 dispositive of the entire case or at least dispositive on the issue on which discovery is sought.
 16 Second, the court must determine whether the pending potentially dispositive motion can be
 17 decided without additional discovery.” *Tradebay, LLC*, 278 F.R.D. at 602. Further, this district
 18 has held that matters dealing with “preliminary issues of jurisdiction, venue, or immunity” typically
 19 warrant a stay of discovery. *Id.* at 603. Plaintiff’s Motion raises threshold issues of whether or not
 20 this matter may even be heard in this forum and it will dictate the extent of any discovery necessary,
 21 if any. Accordingly, Plaintiff’s Motion is dispositive. Further discovery is not needed to resolve
 22 Plaintiff’s Motion.

23 Furthermore, this Court has wide discretion to control the conduct of pretrial discovery by
 24 any party to the action, and courts have routinely stayed pre-trial obligations, including merits
 25 discovery, when a motion to remand was pending before the court. *See Wilmington Sav. Fund*
Soc'y FSB v. El, 2019 U.S. Dist. LEXIS 205380, at *3-5 (D. Nev. Nov. 25, 2019) (Nevada district
 26 court granted a plaintiff’s motion to stay discovery while motion to remand was pending); *Hamrick*
v. Feldman, 2013 U.S. Dist. LEXIS 49608, at *7 (D. Nev. Apr. 5, 2013) (Nevada district court

1 affirmed an order granting a stay of discovery due to the pendency of motion to remand).

2 The Parties agree that no prejudice will result by granting the stipulation to stay discovery
 3 at this juncture. The Parties agree that given that at this early stage in the litigation there is no
 4 scheduling order in place, a case management conference with the Court has not yet been scheduled,
 5 deadlines for fact and expert discovery have not yet been established, and Plaintiff's Motion is fully
 6 briefed, a stay is appropriate and would not result in prejudice to the Parties or limit their ability to
 7 conduct discovery in the event that the Court denies Plaintiff's Motion. Therefore, in order to avoid
 8 the hardship or inequity the Parties would suffer should the case immediately proceed despite
 9 Plaintiff's Motion, the Parties stipulate to a limited stay of discovery in this action until the Court
 10 issues decisions on Plaintiff's Motion, such that discovery will be stayed with the exception that
 11 the parties shall be permitted to continue their evidence preservation efforts. Proceeding in this
 12 manner would preserve both judicial and party resources and promote efficiency.

13 **STIPULATION**

14 IT IS HEREBY STIPULATED by and between the Parties as follows:

15 1. WHEREAS, discovery is stayed pending a decision on Plaintiff's Motion to
 16 Remand to State Court, with the exception that the parties shall be permitted to continue their
 17 ongoing efforts to preserve evidence.

18 2. WHEREAS, alternatively, in the event that the Court denies Plaintiff's Motion, the
 19 Parties shall conduct an Rule 26(f) Conference and then submit a proposed Joint Discovery Plan
 20 and Scheduling Order within forty-five (45) days of the Court's decision on Plaintiff's Motion.

21 3. WHEREAS, this Stipulation is made in good faith and to preserve the resources of
 22 the judicial system and the Parties, is not interposed for delay, and is not filed for an improper
 23 purpose.

24 IT IS SO STIPULATED.

25 ///

26 ///

27 ///

28 ///

1 Dated: January 18, 2022

2

3 By: /s/ Andréa L. Vieira
4 Christian M. Morris (SBN 11218)
Andréa L. Vieira (SBN 15667)
NETTLES | MORRIS

5

6 Attorneys for Plaintiff
KRISTINA A. BIENEK

7

8

9

10

11 Dated: January 18, 2022

12

13 By: /s/ Jason W. Williams
14 Joel D. Odou
Jason W. Williams (SBN 8310)
Xheni Ristani
L. Renee Green
WOOD, SMITH, HENNING &
BERMAN LLP

15

16 Attorneys for Defendants
AFFINITYLIFESTYLES.COM, INC.
d/b/a REAL WATER; REAL WATER
INC.

17

18

19

20

21

22

23

24

25

26

27

28

Dated: January 18, 2022

By: /s/ Noushan Noureddini
Kelley S. Olah (*Pro Hac Vice*)
Noushan Noureddini (*Pro Hac Vice*)
BARNES & THORNBURG LLP

Michael A. Federico (SBN 005946)
OLSON CANNON GORMLEY &
STOBERSKI

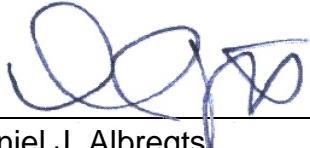
Attorneys for Defendants
COSTCO WHOLESALE
CORPORATION; MAPLEBEAR INC.
d/b/a INSTACART

1 **[PROPOSED] ORDER**

2 Pursuant to the Parties' stipulated request, discovery is stayed pending a decision on Motion
3 to Remand to State Court, with the exception that the parties shall be allowed to continue their
4 evidence preservation efforts. Alternatively, in the event that the Court denies Plaintiff's Motion,
5 the Parties shall conduct a Rule 26(f) Conference and then submit a proposed Joint Discovery Plan
6 and Scheduling Order within forty-five (45) days of the Court's decision on Plaintiff's Motion.

7 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

8
9 Dated: January 20, 2022

10
11
12 
13 _____
14 Daniel J. Albrechts
15 United States Magistrate Judge

16
17
18
19
20
21
22
23
24
25
26
27
28

SIGNATURE ATTESTATION

I hereby attest that I have obtained the concurrence of Andréa L. Vieira, counsel for Plaintiff Kristina A. Bienek, and Jason W. Williams, counsel for Defendants AffinityLifestyles.com, Inc. and Real Water Inc., for the filing of this stipulation.

By: /s/ Noushan Noureddini
Noushan Noureddini